October 18, 2011

Via Email and U.S. Mail

Dennis McLerran
Regional Administrator
U.S. Environmental Protection Agency, Region 10
Regional Administrator's Office, RA-140
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Re: The Portland Harbor Superfund Site

Dear Mr. McLerran:

On behalf of the forty-five signatories listed in the attachment, we write regarding the Portland Harbor Superfund Site in Portland, Oregon ("Site"). As discussed below and in the enclosed white paper, immediate action by senior management of the U.S. Environmental Protection Agency ("EPA") is needed to ensure that the current Feasibility Study ("FS") work and remedy selection process lead to a Site remedy that is technically achievable, sustainable and capable of withstanding judicial review. We therefore request a meeting to address our concerns and the proposed steps outlined below to move the Site toward a successful remedy selection.

The entities who are signatories to this letter are among those that responded to EPA's call to action, working together in a voluntary mediation process toward an agreement to help fund response work at the Site. Most of the signatories are still operating in Portland, generating a substantial portion of the economic activity in the Portland Harbor area. We therefore have a vested interest in the success of this project and the vitality of Portland and the surrounding region. As parties EPA may call upon to help fund or implement the remedy, we also have a direct interest in ensuring that the remedy selected for the Site is scientifically defensible based on site-specific information, while meeting the goals of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq*. ("CERCLA"), of protecting human health and the environment.

As discussed in the enclosed white paper, the Site has reached a crossroads. Important risk management decisions are now required. Over the past eleven years, the Lower Willamette Group ("LWG") and EPA have gathered vast quantities of data and undertaken substantial efforts in the Remedial Investigation and Feasibility Study ("RI/FS") process to understand conditions at the Site. The LWG calculates that it has spent more than $90 million to date in this process. This effort has shown that conditions throughout the majority of the Site do not pose unacceptable risks when considering the most common, realistic site uses. The data also demonstrate that, except for localized areas, the current concentrations of many substances in sediments are consistent with the *final* cleanup goals at other Superfund sites around the country. At this Site, however, certain aspects of the Remedial Investigation ("RI") have been driven by directives from EPA not supported by site-specific information or accepted risk assessment principles. As a result, the Site is now out of alignment with EPA's other sediment sites nationally.

The RI/FS components dictated by EPA include key portions of the risk assessments, which evaluate risks posed by exposure scenarios. For example, EPA required that the assessments include the assumption that residents are eating 7,000 meals of carp over thirty years (nearly 4.5

meals per week), all caught within the Site, and all of which are eaten raw, uncleaned and whole, including the skin, heads, bones and guts. Similar assumptions were directed by EPA for smallmouth bass. These single-species diet evaluations are based on overly conservative, unfounded assumptions regarding fish consumption, cooking and preparation methods. EPA also directed the assessment to include the assumption that residents are eating 900 meals of raw, unpurged Asian clams caught exclusively within the Site over thirty years. This directive apparently was based on an anecdotal statement that some transients reported occasionally eating clams. However, Asian clams found in this area usually grow no larger than a nickel and are so rare at the Site that the LWG had difficulty collecting enough specimens for analysis. While various exposure scenarios were evaluated, these and other EPA-directed assumptions are driving the risk assessment with "risk" values orders of magnitude greater than those calculated under reasonable scenarios.

Directives from EPA also skewed the background calculations. For example, EPA excluded all sediment data in a 3.5-mile stretch of the Willamette River immediately upstream of the Site. While some of these locations may have been impacted by nearby sources, the data should have been evaluated to distinguish any such outliers from usable data. Even for samples further upstream, EPA censored the data for PCBs to remove higher results at four locations without sufficient justification for the assertion that the results are outliers. EPA's directive to ignore data dramatically lowered the background calculation for PCBs, ultimately causing EPA to select an unprecedented background level of just 17 parts per billion ("ppb").

EPA also directed other aspects of the RI/FS without sufficient justification. For example, EPA selected the preliminary remediation goals, which can serve as precursors for the cleanup levels, and the areas of potential concern, which define the extent of sediments for which active remedial technologies must be evaluated, with little explanation of the rationale or process used. As a result, interested parties and the public can only speculate as to the process used to develop these key components of the RI/FS.

Given these EPA directives, the Site is out of alignment with other sediment sites nationally. This disparity between EPA's approach at the Site and other sediments sites is illustrated in the enclosed white paper, which compares the pre-remediation sediment concentrations and preliminary remediation goals at the Site to the remedial action levels at other EPA sediment sites. The preliminary remediation goals for certain substances at this Site are orders of magnitude below the cleanup levels at most other sediment sites. While final cleanup levels often are higher than preliminary remediation goals, many of the preliminary remediation goals that EPA selected at this Site are so low that they bear no relation to scientifically defensible cleanup levels. In fact, current concentrations of PCBs, PAHs and DDX throughout most of the Site already are within the range of concentrations approved by EPA for *final* cleanup levels at other sediment sites. Therefore, the majority of the Site already is cleaner for those substances even before any remedial action than some sediment sites will be after remediation.

It is critical for the success of this project that EPA senior management address these issues now to avoid an undue burden on the Portland community and region. Given the environmental and cultural significance of the Willamette River, appropriate decisions must be made to ensure that

the remedy is achievable and sustainable. As a working port, Portland Harbor also is an economic engine for the Portland metropolitan area, contributing to the local, regional, and national economies by providing employment, local and state tax revenues, federal customs fees and business revenue. Any agency actions that unreasonably and unnecessarily impede harbor activity could damage the Portland community and the region through lost jobs, lower wages, decreased property values and increased taxes and fees without commensurate environmental benefits, as discussed in the enclosed white paper. These issues should be resolved now to advance prospects for a successful remedy and prevent unnecessary delay and uncertainty for the community.

We therefore request that you and other EPA senior management take immediate action to ensure that the FS and remedy selection process at this Site achieve the goals of protecting human health and the environment through technologically achievable and sustainable means without imposing unnecessary burdens on the community. This effort will not require EPA to redo components of the RI/FS or gather additional data. In fact, the data required to support rational decisions already exist. By focusing on scientifically defensible scenarios and evaluating the data in a manner consistent with EPA guidance and the approach applied at other sites, EPA can make remedial decisions that are appropriate and capable of withstanding judicial review.

Toward that end, we also request that EPA Headquarters and the Contaminated Sediments Technical Advisory Group ("CSTAG") commence an immediate review of the Site. As the group charged to encourage national consistency at complex sediment sites, CSTAG is uniquely well-suited to ensure that EPA's approach in setting cleanup levels and evaluating remedial alternatives is consistent with its approach at other sediment sites. Given the significance of the issues summarized in the enclosed white paper, immediate involvement by CSTAG is necessary to ensure that its conclusions are adequately addressed during the current FS process. In that effort, CSTAG should coordinate directly with both EPA and designated representatives of the interested parties listed in the attachment, and EPA should thoroughly consider CSTAG's recommendations.

Representatives of the signatories will contact you soon to schedule a meeting to address these critical issues. During our meeting, we also can discuss the issues to be addressed in a CSTAG review and an appropriate schedule and process. We look forward to working with you toward our common goal of a successful remedy selection process at the Site.

Sincerely,

See attached list of signatories

Enclosure: *Portland Harbor Superfund Site: Risk Management Decisions Required*

cc: James Woolford, Director, EPA Office of Superfund Remediation
Daniel D. Opalski, Director, Region 10 Office of Environmental Cleanup
Allyn Stern, EPA Region 10 Regional Counsel
Lori Houck Cora, Esq., EPA Region 10 Assistant Regional Counsel
Chip Humphrey, EPA Region 10 Remedial Project Manager
Kristine Koch, EPA Region 10 Remedial Project Manager
Steve Ells, Chair, CSTAG
Dick Pederson, Director, Oregon Department of Environmental Quality

Dennis McLerran, EPA Regional Administrator
October 18, 2011

Signatories

ACF Industries LLC

Acme Trading & Supply Company

Anchor Park LLC

Ash Grove Cement Company

Ashland Inc. and its wholly owned subsidiary Hercules, Inc.

ATKN Company

Atlantic Richfield Company / BP West Coast Products, LLC

Babcock Land Company, LLC

BAE Systems San Diego Ship Repair Inc.

Basin Street Associates, LLC

Beazer East, Inc.

Bird Inc.

Brix Maritime Co.

Calbag Metals Co.

Cargill, Incorporated

Container Management Systems, LLC

Crawford Street Corporation

Daimler Trucks North America LLC

Distribution, Inc., dba FTL, Inc.

DSU Peterbilt & GMC Inc.

Equilon Enterprises LLC dba Shell Oil Products US

ESCO Corporation

Estes Express Lines

ExxonMobil Corporation

FMC Corporation

Fred Devine Diving and Salvage

Front Avenue Corp.

Galvanizers Company

HAJ, Inc. dba Christenson Oil

Dennis McLerran, EPA Regional Administrator
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IMACC Corporation

Koppers Inc.

Lakeside Industries, Inc.

Legacy Site Services as agent for Arkema Inc.

Lockheed Martin Corporation

Marine Group LLC

Mitsubishi Corporation

Mitsubishi International Corporation

Northwest Pipe Company

PacifiCorp Environmental Remediation Company

Schnitzer Investment Corp.

Schnitzer Steel Industries, Inc.

Shaver Transportation Company

Shore Terminals LLC

Tube Forgings of America, Inc.

Union Carbide Corporation